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HOUSE BILL 497

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Max Coll

AN ACT

RELATING TO OPTOMETRY; ALLOWING PATIENTS TO HAVE COPIES OF
THEIR CONTACT OR CORNEAL LENS PRESCRIPTION; AMENDING AND
ENACTING CERTAIN SECTIONS OF THE OPTOMETRY ACT RELATING TO
CONTACT OR CORNEAL LENSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-2-2 NMSA 1978 (being Laws 1973,
Chapter 353, Section 2, as amended) is amended to read:

"61-2-2. DEFINITIONS. -- As used in the Optometry Act:

A. "practice of optometry" means:

(1) the ~~employment~~ employing of ~~any~~ a
subjective or objective means or ~~methods~~ method, including
the prescription or administration of topical ocular
pharmaceutical agents, for the purpose of determining the
visual defects or abnormal conditions of the human eye and its

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1 adnexa; and

2 (2) the employing, adapting or prescribing of
3 preventive or corrective measures, including lenses, prisms,
4 contact or corneal lenses or other optical appliances; and
5 prescribing or administering topical ocular pharmaceutical
6 agents and oral pharmaceutical agents as authorized in Section
7 61-2-10.2 NMSA 1978 for the correction, relief or referral of
8 visual defects or abnormal conditions of the human eye and its
9 adnexa. The "practice of optometry" shall not include the use
10 of surgery or injections in the treatment of eye diseases;
11 provided that persons who sell or dispense eyeglasses upon
12 prescription and who do not prescribe ophthalmic lenses for the
13 eyes shall not employ, adapt, [~~dispense~~] modify, [~~provide,~~
14 ~~sell~~] give or fit contact or corneal lenses; and provided
15 further that the testing, design, dispensing and monitoring of
16 a contact lens fitting shall be performed at the optometrist's
17 place of practice;

18 B. "ophthalmic lens" means a lens that has a
19 spherical, cylindrical or prismatic value and that is ground
20 pursuant to a prescription and intended to be used as
21 eyeglasses [~~or spectacles~~];

22 C. "contact or corneal lens" means [~~any~~] a lens to
23 be worn on the anterior segment of the human eye, [~~to be~~] that
24 is prescribed, [~~dispensed~~] adapted, employed, modified
25 [~~provided, sold~~] and fitted by a licensed optometrist or

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2 D. "prescription" means a formula written for
3 ophthalmic lenses or contact or corneal lenses, for a topical
4 ocular pharmaceutical agent or for an oral pharmaceutical agent
5 as authorized in Section 61-2-10.2 NMSA 1978 that comes under
6 the provisions of the New Mexico Drug, Device and Cosmetic Act
7 ~~[by a person duly licensed and containing the following~~
8 ~~essential elements:~~

9 ~~(1) an order given individually for the person~~
10 ~~for whom prescribed, either directly from the prescriber to the~~
11 ~~pharmacist or indirectly by means of a written order signed by~~
12 ~~the prescriber, and shall bear the name and address of the~~
13 ~~prescriber, his license classification, the name and address of~~
14 ~~the patient, the name and quantity of the drug prescribed,~~
15 ~~directions for use and the date of issue; or~~

16 ~~(2) dioptric power of spheres, cylinders and~~
17 ~~prisms, axes of cylinders, position of prism base and, if so~~
18 ~~desired by the prescriber, light transmission properties and~~
19 ~~lens curve values;~~

20 ~~(3) designation of pupillary distance; and~~

21 ~~(4) name of patient, date of prescription,~~
22 ~~expiration date and the name and office location of prescriber;~~
23 ~~provided, however, that:~~

24 ~~(5) those who sell and dispense eyeglasses~~
25 ~~upon the written prescription of a physician, surgeon or~~

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1 ~~optometrist may determine the:~~

2 ~~(a) type, form, size and shape of~~
3 ~~ophthalmic lenses;~~

4 ~~(b) placement of optical centers for~~
5 ~~distance seeing and near work;~~

6 ~~(c) designation of type and placement of~~
7 ~~reading segments in multivision lenses;~~

8 ~~(d) type and quality of frame or~~
9 ~~mounting, type of bridge and distance between lenses, type,~~
10 ~~length and angling of temples; and~~

11 ~~(e) designation of pupillary distance];~~

12 E. "eyeglasses" means any exterior optical device
13 using ophthalmic lenses for the correction or relief of
14 disturbances in and anomalies of human vision and includes
15 spectacles and other devices using ophthalmic lenses; [and]

16 F. "board" means the board of optometry; and

17 G. "seller" means a person who sells contact or
18 corneal lenses pursuant to a prescription after final fitting
19 by an optometrist or physician."

20 Section 2. A new section of the Optometry Act is enacted
21 to read:

22 "[NEW MATERIAL] CONTACT OR CORNEAL LENS-- ADDITIONAL
23 PRESCRIPTION REQUIREMENTS-- NOTICE TO PATIENTS-- WRITTEN
24 VALIDATION OF AGENCY BY SELLER. --

25 A. A prescription for a contact or corneal lens

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1 shall be determined after a comprehensive eye examination and
2 diagnostic lens fitting and after the contact or corneal lens
3 has been adequately adapted and the patient has been released
4 from the initial follow-up care by the prescribing optometrist
5 or physician. Prescriptions shall be issued only for a contact
6 or corneal lens the optometrist or physician has assessed
7 clinically. A prescription shall include:

8 (1) a specific expiration date not less than
9 twenty-four months after the date of the prescription, unless a
10 shorter period is warranted by the patient's ocular health or
11 by potential harm to the patient's ocular health;

12 (2) the signature of the optometrist or
13 physician; and

14 (3) any special design features that may be
15 applicable.

16 B. After final fitting, and absent any medical
17 reason to the contrary, the contact or corneal lens
18 prescription shall be given to the patient at his request.

19 C. Optometrists and physicians shall display in a
20 prominent location in their offices a sign to inform their
21 patients that they have the right to request a copy of their
22 prescription.

23 D. An optometrist or physician shall verify the
24 validity and content of a contact or corneal lens prescription
25 by written means to a seller who represents that the patient

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1 has authorized the seller to act as his agent. "

2 Section 3. Section 61-2-4 NMSA 1978 (being Laws 1973,
3 Chapter 353, Section 3) is amended to read:

4 "61-2-4. LICENSE REQUIRED. -- Unless licensed or exempted
5 under the Optometry Act, no person shall:

- 6 A. practice optometry;
- 7 B. represent himself or offer his services as being
8 able to practice optometry;
- 9 C. prescribe eyeglasses or give a prescription to a
10 patient; or

11 D. duplicate or replace an ophthalmic lens [~~not~~
12 ~~including~~] or contact [~~lenses~~] or corneal lens without a
13 current prescription [~~or without a written authorization from~~
14 ~~the patient if the prescription is not available~~]. "

15 Section 4. Section 61-2-14 NMSA 1978 (being Laws 1973,
16 Chapter 353, Section 12, as amended) is amended to read:

17 "61-2-14. OFFENSES. --

18 A. Each of the following acts committed by any
19 person constitutes a fourth degree felony, punishable upon
20 conviction as provided in the Criminal Code:

- 21 (1) practicing or attempting to practice
22 optometry without a current license issued by the board;
- 23 (2) using or attempting to use pharmaceutical
24 agents without the certification issued by the board, unless
25 [~~however~~] the administration of pharmaceutical agents is done

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1 under the direct supervision of a licensed optometrist
2 certified to administer the pharmaceutical agents in accordance
3 with the provisions of the Optometry Act;

4 (3) permitting any person in one's employ,
5 supervision or control to practice optometry or use
6 pharmaceutical agents unless that person is licensed and
7 certified in accordance with the provisions of the Optometry
8 Act or unless the administration of pharmaceutical agents is
9 done under the direct supervision of a licensed optometrist
10 certified to administer the pharmaceutical agents in accordance
11 with the provisions of the Optometry Act; and

12 (4) practicing optometry, including the use of
13 pharmaceutical agents, during any period of time in which one's
14 license has been revoked or suspended as provided by the
15 Optometry Act.

16 B. Each of the following acts committed by any
17 person constitutes a misdemeanor, punishable upon conviction as
18 provided in the Criminal Code:

19 (1) making a willfully false oath or
20 affirmation where the oath or affirmation is required by the
21 Optometry Act;

22 (2) selling or using any designation, diploma
23 or certificate tending to imply that one is a practitioner of
24 optometry, unless one holds a license as provided by the
25 Optometry Act;

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1 (3) refusal, after a request, to provide a
2 patient a copy of his [~~spectacle~~] prescription [~~not including a~~
3 ~~contact lens prescription, providing~~] if the prescription is
4 not over [~~one year~~] two years old;

5 (4) duplicating or replacing an ophthalmic
6 lens [~~not including~~] or contact [~~lenses~~] or corneal lens
7 without a current prescription not more than two years old or
8 without [~~a written~~] authorization from the patient if the
9 prescription is not available;

10 (5) except for licensed optometrists and as
11 provided in Subsection A of Section 61-2-15 NMSA 1978, using
12 any trial lenses, trial frames, graduated test cards or other
13 appliances or instruments for the purpose of examining the eyes
14 or rendering assistance to anyone who desires to have an
15 examination of the eyes; provided, however, that it is not the
16 intent of this paragraph to prevent any school nurse,
17 schoolteacher or employee in public service from ascertaining
18 the possible need of vision services [~~provided that such~~] if
19 the person, clinic or program does not attempt to diagnose or
20 prescribe ophthalmic lenses or contact or corneal lenses for
21 the eyes or recommend any particular practitioner or system of
22 practice;

23 (6) advertising by any means the fabricating,
24 adapting, employing, providing, sale or duplication of
25 eyeglasses or any part thereof. This paragraph does not

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1 preclude the use of a business name, trade name or trademark
2 not relating to price or the use of the address, telephone
3 number, office hours and designation of the provider in or at
4 retail outlets, on business cards, eyeglass cleaners and cases
5 or in news media or in public directories, mailings and
6 announcements of location openings or the use of the words
7 "doctors' prescriptions for eyeglasses filled" or "eyeglass
8 repairs, replacements and adjustments"; or

9 (7) selling of prescription eyeglasses or
10 contact or corneal lenses, frames or mountings for lenses in an
11 establishment in which the majority of its income is not
12 derived from being engaged in that endeavor."

13 Section 5. Section 61-2-15 NMSA 1978 (being Laws 1973,
14 Chapter 353, Section 13) is amended to read:

15 "61-2-15. EXEMPTIONS. --

16 A. Nothing in the Optometry Act, except as provided
17 in Section [~~67-1-14 NMSA 1953~~] 61-2-16 NMSA 1978, shall be
18 construed to apply to licensed physicians or surgeons or
19 persons, clinics or programs under their responsible
20 supervision and control. Persons, clinics and programs under
21 the responsible supervision and control of a licensed physician
22 or surgeon shall not use either loose or fixed trial lenses for
23 the sole purpose of determining the prescription for eyeglasses
24 or contact or corneal lenses. [~~The fitting of a contact lens~~
25 ~~to a patient shall be done at the practitioner's place of~~

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~~practice.]~~

B. Nothing in the Optometry Act, except as provided in Sections [~~67-1-2, 67-1-12, 67-1-14 and 67-1-15 NMSA 1953~~] 61-2-2, 61-2-14, 61-2-16 and 61-2-17 NMSA 1978, shall be construed to apply to persons selling eyeglasses who do not represent themselves as being qualified to detect or correct ocular anomalies and who do not traffic upon assumed skill in adapting [~~ophthalmic~~] ophthalmic lenses to the eyes. "

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